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IN THE

Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,
Petitioner,

v.

ELLA WILLIAMS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENT

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 66 national and international unions representing approximately 13 million working men and women, files this brief *amicus curiae* with the consent of the parties as provided for in the Rules of this Court.[1]

SUMMARY OF ARGUMENT

In this case, the Court of Appeals concluded that "taking the evidence in the light most favorable to the plaintiff [Ella Williams] . . . the plaintiff's set of impairments to her arms, shoulders and neck are sufficiently disabling to allow the fact finder to find she crosses the threshold into the protected class of individuals under the ADA who must be accorded reasonable accommodation." Pet. App. 4a. In so doing the court below stated that Ms. Williams was substantially limited in performing manual tasks—not only "manual tasks associated with working," but also "manual tasks associated with recreation, household chores and living generally." *Id.* 6a.

According to the Petitioner, the theory of the Court of Appeals' disability ruling is that "Williams's inability to perform the particular manual tasks associated with her specific job, without more, demonstrate[d] that she [was] 'substantially limited' in the major life activity of performing manual tasks." Pet. Br. 11-12. That theory is erroneous, says Petitioner, in that it makes the inability to do the particular manual tasks of a specific job the hallmark of inability to perform manual tasks as a major life activity. *Id.*

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[1] No counsel for a party authored this brief *amicus curiae* in whole or in part, and no person or entity, other than the *amicus curiae*, made a monetary contribution to the preparation or submission of this brief.

This attack on the Court of Appeals' ruling is doubly flawed.

First, it fundamentally mischaracterizes the Court of Appeals' decision, which does not conflate the inability to do a particular manual task job and inability to do manual tasks more generally.

Second, the Petitioner's basis for so collapsing the Court of Appeals' disability ruling is the following erroneous proposition: the physical impairments of carpal tunnel syndrome/tendinitis substantially limit the impaired person's ability to perform certain manual tasks that are solely and particularly associated with working and do not limit the impaired person's ability to perform a range of tasks associated with "recreation, household chores and living generally." The scientific literature on the nature of carpal tunnel syndrome/tendinitis, and the literature, as well as the testimony by individuals with these impairments, on the nature of that impairment's functional effects, refute that proposition.

ARGUMENT

Ella Williams—who was diagnosed with bilateral carpal tunnel syndrome and bilateral tendinitis in her hands, wrists, arms, neck and shoulders—sought a work assignment accommodation from her employer, Toyota Motor Manufacturing, Kentucky, Inc. ("Toyota") in the following form: reassignment from a Quality Control Inspection Operations position that entailed physically demanding manual tasks, back to her former Quality Control Inspection Operations position, which imposed other performance demands but not the performance of such manual tasks. Pet. App. 25a-28a. Toyota did not provide Ms. Williams the requested accommodation.

Ms. Williams brought suit under the Americans with Disabilities Act contending, *inter alia*, that Toyota had failed to reasonably accommodate her disability as required by the

ADA. The District Court granted summary judgment in Toyota's favor on the ground that Ms. Williams' carpal tunnel syndrome/tendinitis was not a "disability" within the ADA's meaning of that term. Pet. App. 42a. The Court of Appeals reversed the District Court's grant of summary judgment to Toyota and remanded for further proceedings on Ms. Williams' ADA claim. Pet. App. 6a-7a.

In reversing the District Court, the Court of Appeals concluded that "taking the evidence in the light most favorable to the plaintiff [Ms. Williams], . . .the plaintiff's set of impairments to her arms, shoulders and neck are sufficiently disabling to allow the fact finder to find she crosses the threshold into the protected class of individuals under the ADA who must be accorded reasonable accommodation." Pet. App. 4a. These impairments were "sufficiently severe" to make Ms. Williams' arms and hands "like deformed limbs," and rendered "Williams '[s]ignificantly restricted as to the condition, manner or duration under which [she] can perform [manual tasks] as compared to the condition, manner, or duration under which the average person in the general population can perform [them].'" *Id.* 6a (quoting 29 C.F.R. § 1630.2(j)(1)(ii)) (bracketed language by the Court). That being so, Ms. Williams was substantially limited in performing manual tasks—not only "manual tasks associated with working," but also "manual tasks associated with recreation, household chores and living generally." *Id.*[2] Having "conclude[d] that Williams is substantially limited in performing manual tasks," the Court of Appeals expressly

[2] Toyota emphasizes a sentence in the Sixth Circuit's opinion that acknowledges that Williams "can perform a range of isolated, non-repetitive manual tasks performed over a short period of time [involving] personal or household chores." Pet. App. 4a. Toyota would read that sentence to say that Ms. Williams can as a general matter perform non-work-related manual tasks. Pet. Br. 16-18. But that plainly is *not* what the Court of Appeals was saying, as is evident from the subsequent passages in the opinion quoted in text.

declined to consider the separate questions of "whether Williams is substantially limited as to the major life activities of lifting or working." *Id.* 5a.

According to Toyota, the theory of the Court of Appeals' disability ruling is that "Williams's inability to perform the particular manual tasks associated with her specific job, without more, demonstrate[d] that she [was] 'substantially limit[ed]' in the major life activity of performing manual tasks." Pet. Br. 11-12. That theory is erroneous, says Toyota, in that it makes the inability to do the particular manual tasks of a specific job the hallmark of inability to perform manual tasks as a major life activity. *Id.* This attack on the Court of Appeals' ruling is doubly flawed.

First of all, Toyota fundamentally mischaracterizes the Court of Appeals' decision. What the court below ruled was that Ms. Williams' set of impairments—bilateral carpal tunnel syndrome and bilateral tendinitis of the hands, wrists, arms, neck and shoulders—which were "sufficiently severe" to make Ms. Williams' arms and hands "like deformed limbs," and which limited her ability to perform the manual tasks associated with her Toyota job, were a set of impairments that as a general matter limited her ability to perform the manual tasks associated "with recreation, household chores and living generally," *viz*, with the major life activity of performing manual tasks. Given the nature of those impairments, the nature of their functional effect on a person's ability to use her arms and hands to perform manual tasks, and the nature of the range of manual tasks associated with recreation, household chores, and living generally, that ruling is entirely sound.

Second, insofar as Toyota goes beyond arguing that the Court of Appeals' disability ruling is contrary to the evidence on Ms. Williams' ability to perform a range of manual tasks, Toyota's basis for collapsing that ruling into one that equates inability to do a particular manual task job with inability to do

manual tasks more generally is the following erroneous proposition: the physical impairments of carpal tunnel syndrome/tendinitis substantially limit the impaired person's ability to perform certain manual tasks that are solely and particularly associated with working and do not limit the impaired person's ability to perform a range of tasks associated with "recreation, household chores and living generally." As we show in the argument that follows, the scientific literature on the nature of carpal tunnel syndrome/tendinitis and on the nature of its functional effects refutes that proposition.

1. So far as relevant here, the ADA defines "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2). The Equal Employment Opportunity Commission (EEOC) has adopted comprehensive regulations that "provide additional guidance regarding the proper interpretation of th[e statutory] term [disability.]" *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 479 (1999).

According to the EEOC's regulations, "major life activities" are "those basic activities that the average person in the general population can perform with little or no difficulty." 29 C.F.R. pt. 1630, App. § 1630.2(i). The regulations further elaborate on the meaning of "major life activities" by providing that such activities include "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i). And, the regulations add that a person is "substantially limited" if he or she is "[u]nable to perform a major life activity that the average person in the general population can perform," or is "[s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major

life activity." 29 C.F.R. § 1630.2(j). So, for example, "an individual who, because of an impairment, can only walk for very brief periods of time would be substantially limited in the major life activity of walking." 29 C.F.R. pt. 1630, App. § 1630.2(j).

2. We make physical uses of our shoulders, arms, and hands in performing a range of manual tasks associated with working and a range of manual tasks associated with recreation, household chores, and living generally. Our physical capacities in that regard are affected by a family of disorders known as "musculoskeletal disorders," or MSDs. The MSDs pertinent here are denominated carpal tunnel syndrome and tendinitis of the hands, arms, neck and shoulders.[3]

MSDs are "conditions that involve the nerves, tendons, muscles, and supporting structures of the body." National Institute for Occupational Safety and Health, Musculoskeletal Disorders and Workplace Factors (1997), at x. MSDs are "soft tissue" disorders, as contrasted with "hard tissue" disorders involving the bone and cartilage. David A. Zohn, Musculoskeletal Pain: Diagnosis and Physical Treatment (2nd ed. 1988), at 4. "The soft tissues composing the musculoskeletal system are the muscles and their fascial envelopes, tendons and tendon sheaths, ligaments, joint capsules, and bursae." *Id.* at 3-4. The soft tissues serve several functions, most importantly to "support and move joints." *Id.* at 4. Soft tissues also serve as linings of joints and serve as "'bumpers' to friction over bony prominences." *Id.* The MSDs that involve the upper extremities of the body

[3] Following an exhaustive review of the scientific literature, the National Research Council of the National Academy of Sciences concluded that "musculoskeletal disorders of the low back and upper extremities" are "an important national health problem." National Research Council, Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities (2001), at 8.

include disorders such as "rotator cuff injuries (lateral and medial), epicondylitis, carpal tunnel syndrome, tendinitis, [and] tenosynovitis of the hand and wrist." National Research Council, Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities (2001), at 431.

(a). Carpal tunnel syndrome (CTS), a particularly pervasive and serious MSD, is caused by compression of the median nerve at the wrist. Robin Herbert, et al., Clinical Evaluation and Management of Work-Related Carpal Tunnel Syndrome, 37 Am. J. Ind. Med. 62 (2000), at 62.

The mechanism by which median nerve compression occurs can be described as follows. "At the wrist, the median nerve and flexor tendons pass through a common tunnel whose rigid walls are formed by the carpal bones and joints and the transverse carpal ligament (flexor retinaculum)." Robert B. Salter, Textbook of Disorders and Injuries of the Musculoskeletal System (Third ed. 1998). "Because of its tight internal dimensions and full content of nine flexor tendons enclosed in synovial sheaths, the carpal canal offers little tolerance for volume change." Martin Cherniack, "Upper Extremity Disorders," Textbook of Clinical Occupational and Environmental Medicine 376-388 (Linda Rosenstock, et al., eds., 1994), at 381. Thus, "[a]ny disorder that takes up space in this already crowded tunnel compresses the most vulnerable structure, the median nerve, and produces *carpal tunnel syndrome*." Salter, *supra*, at 326 (emphasis in original).

Carpal tunnel syndrome has been a recognized disorder for nearly 150 years. "Median nerve compression at the wrist," now known as carpal tunnel syndrome, was first reported in 1860. J. Steven Moore, Carpal Tunnel Syndrome, 7 Occ. Med. 741 (1992), at 741-2. The term "carpal tunnel syndrome" was first used in the early 1950s, although the disorder was also described as tardy median palsy, partial thenar atrophy, and median neuritis. *Id.* By 1957, however,

"[t]he term carpal tunnel syndrome [was] now used to describe all cases of compression neuropathy of the median nerve at the wrist." *Id.*

The symptoms and effects of carpal tunnel syndrome are well documented. Carpal tunnel syndrome is identified by "a characteristic pattern of pain, paresthesias, and weakness following the distribution of the median nerve distal to the transcarpal ligament in the wrist." Cherniack, *supra*, at 380-81. Individuals with CTS experience "[s]ymptoms of pain, numbness, tingling, or burning" and may also report "clumsiness of the hand and decreased grip strength." Lisa Mani & Fredric Gerr, Work-Related Upper Extremity Musculoskeletal Disorders, 27 J. Occ. Env. Med. (2000) at 859. In addition, "weakness and atrophy of the thenar [thumb] muscles [may occur] in advanced cases [of CTS]." Herbert, *supra*, at 63.

Carpal tunnel syndrome is diagnosed through "evaluating the medical history, physical findings, and results of electrophysiologic testing." Preventing the Work-Related Carpal Tunnel Syndrome: Physician Reporting and Diagnostic Criteria, 112 Annals of Int. Med. 317 (1990). "[M]ost authorities agree that a combination of clinical symptoms and signs and electrodiagnostic findings is the most valid means of diagnosing carpal tunnel syndrome." Herbert, *supra*, at 63.

(b). Tendinitis, in its turn, is inflammation of the tendons. Sandra Curwin & William D. Stanish, Tendinitis: Its Etiology and Treatment (1984), at 25. Tendons are "ropelike structures that connect muscles to bone." *Id.* at 1. Tendons are essential to the movement of limbs. "The muscles are the prime movers of the body—they contract and produce force. Tendons allow precise application of this force to the limb being moved. . . . [W]hile muscle and tendon are structurally separate, functionally they are one unit—the muscle-tendon unit." *Id.*

"Most tendon injuries fall into the classification known as *overuse syndromes*. . . .The term *overuse* means that the tendon has been loaded repeatedly until it is unable to withstand further loading, at which point damage occurs." Curwin & Stanish, *supra*, at 25 (emphasis in original). "The injured tendon . . . is one with microscopic or macroscopic damage to both its structural units and its blood supply. In this state, the tendon is predisposed to further injury . . ." *Id.* at 31.

Tendon degeneration can play a significant role in the development of tendinitis. Compression of the tendons, which occurs when the arm is elevated, impairs blood circulation which, in turn, accelerates tendon degeneration. Circulation can also be impaired during static contractions of the shoulder muscles. Impairment of circulation causes cell death within the tendon, forming debris in which calcium may deposit. "[E]xertion may trigger an inflammatory response to the debris of dead cells, resulting in an active tendinitis." Mats Hagberg, "Neck and Shoulder Disorders," Textbook of Clinical Occupational and Environmental Medicine 356-364 (Linda Rosenstock, et al., eds., 1994), at 360. Given this biomechanical process, "[i]t is not surprising to find a high risk of shoulder tendon lesions in activities involving static contractions of the supraspinatus muscle or repetitive shoulder forward flexions or abductions." *Id.*

The shoulder is highly susceptible to tendinitis. In particular, the rotator cuff muscles are a common site of tendinitis, as are the biceps muscles. Hagberg, *supra*, at 359. At these locations, the tendons perform large movements as they pass the shoulder joint. *Id.* As the National Institute of Arthritis and Musculoskeletal and Skin Diseases explains, "[t]he shoulder is the most movable joint in the body. However, it is an unstable joint because of the range of motion allowed. It is easily subject to injury because the ball of the upper arm is larger than the shoulder socket that holds it. To remain stable, the shoulder must be anchored by its muscles,

tendons, and ligaments." National Institute of Arthritis and Musculoskeletal and Skin Diseases, Questions and Answers About Shoulder Problems, available at http://www.nih.gov/niams/healthinfo/shoulderprobs/shoulderqa.htm.

Shoulder tendinitis has been described as having three stages. "Stage I is characterized by edema and hemorrhage, often seen acutely after excessive tendon stress during overhead use of the arm in sports or work. In stage II, fibrosis and tendinitis result in repeated episodes of mechanical inflammation. Bone spurs and tendon rupture are evidence of a stage III impingement lesion." Hagberg, *supra*, at 360. Moreover, "[a] history of shoulder tendinitis (stages I or II) makes a worker doing repetitive or overhead work susceptible to a relapse of tendinitis." *Id.* at 361.

Tendinitis of the arms and hands is accompanied by tenderness, swelling, warmth, and, on occasion, redness. Mani & Gerr, *supra*, at 857. Individuals with rotator cuff tendinitis typically experience weakness, pain, and tenderness, and may have limited ranges of shoulder movement as well. *Id.* at 852.

(c). The scientific literature demonstrates that MSDs—including carpal tunnel syndrome and tendinitis—can and do impair the ability of individuals to perform the range of physical tasks associated with daily living.

A group of researchers conducted a survey of 575 Maryland individuals with MSDs, including carpal tunnel syndrome, tendinitis of the arm, wrist, shoulder or rotator cuff, and other disorders. Half of the respondents reported that their MSDs had a continuing adverse effect on their ability to perform normal manual tasks. Respondents reported that "the impact of [their] symptoms was felt more at home than on the job." James Keogh, et al., The Impact of Occupational Injury on Injured Worker and Family: Outcomes of Upper

Extremity Cumulative Trauma Disorders in Maryland Workers, available at the OSHA Docket Office, Docket No. S-777, Exhibit 30-651-1.

These researchers found a high percentage of respondents reporting that their disorders interfered with their ability to perform a variety of basic, simple tasks. For example, individuals with MSDs reported difficulty with activities involving arm and shoulder strength and coordination, such as pushing open a window (49%) or pushing up from an armchair (43%). Respondents also had difficulty with activities requiring grip strength and coordination, such as writing with a pen (49%) and pouring from a container into a glass (43%). Myriad other basic and simple tasks posed difficulties for people with MSDs: pulling open a door, carrying a small bag of groceries, holding an umbrella, turning a doorknob, holding a phone to the ear, turning a key, picking up a coin, lifting a child over a crib rail, lowering oneself into a bathtub, mopping floors, cooking at a stove top, scratching the back, and putting items on a high shelf. Individuals with carpal tunnel syndrome were more likely to report such difficulties than people with other MSDs. Keough, *et al.*, *supra* at 8-9, 20.

Another study surveyed Connecticut individuals with MSDs, including carpal tunnel syndrome and tendinitis. Timothy F. Morse, et al., The Economic and Social Consequences of Work-related Musculoskeletal Disorders: The Connecticut Upper-extremity Surveillance Project (CUSP), 4 Int. J. Occup. Environ. Health 209 (1998). Nearly half of the respondents reported that they had to cut back on activities at home because of their disability. *Id.* at 212. This cohort was far more likely to report difficulty performing various tasks of daily living as compared to a control group. Specifically, individuals with MSDs were much more likely to report difficulty with basic tasks such as child care, bathing, writing, gripping, household chores, opening jars, carrying bags, brushing hair and/or teeth, and driving. *Id.* at 212-13.

Dr. Robin Herbert, an expert in MSDs, recently reported on the preliminary results of a an additional pilot study involving individuals who used computers on their jobs who had MSDs, including hand/wrist tendinitis and carpal tunnel syndrome. Robin Herbert, M.D., Testimony on the Need for a National OSHA Ergonomics Program Rule, before the Occupational Safety and Health Administration (March 2, 2000), available at the OSHA Docket Office, Docket No. S-777. Again, high percentages of these individuals reported significant impairment in their ability to perform a variety of manual tasks. For example, 49 percent reported moderate to severe difficulty in writing; 53 percent of respondents reported moderate to severe difficulty opening jars; and 54 percent reported moderate to severe difficulty doing household chores.

The findings of these studies are borne out by the testimony of individual workers at recent rulemaking hearings before the federal Occupational Safety and Health Administration (OSHA).[4]

Jan Garrett, a poultry worker at a poultry processing plant in Roberts, Kentucky, contracted carpal tunnel syndrome while working in the "final trims" department at her plant, where her job involved cutting off various parts of chickens as they passed her on the line. She described the impact of her impairment as follows:

> My hands would go numb, tingle, and ache deep down.
>
> At home I have trouble cutting vegetables, peeling, slicing, chopping. I haven't been able to cut a head of lettuce . . . because I just cannot put the pressure on it with a knife.

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[4] An ergonomics program standard was promulgated by OSHA after an intensive rulemaking process. 65 Fed. Reg. 68261 (Nov. 14, 2000). The standard was however disapproved under the Congressional Review Act. P.L. 107-5, March 20, 2001. The record from the OSHA rulemaking is available at the OSHA Docket Office, and the transcripts from the informal rulemaking hearings are available on the Internet.

> I've had a lot of trouble around Christmas where you do all your cookies and all like that because I can't do all the stirring and mixing that you need to do.
>
> Cleaning is a big problem because of trying to grip the handles of the vacuum cleaner, mops, and such. And just using a spray bottle is just a killer. I mean you just can't do it.
>
> Laundry, I have problems getting clothes out of the washer because you have to grab them and pull them out and everything. And I hang my laundry out a lot, as much as I can. But my husband and son have to help me do that because you can't hold onto the clothespin very long.
>
> We bought us a home last summer and my husband and sister did most of the cleaning before we moved in because I can't do it.
>
> I still haven't been able to wash my windows yet.
>
> I have cramps in my hands and wrists if I get heavy pots and pans, skillets out of the oven. So I haven't even tried to clean the oven. I get burned a lot because I can't feel the heat 'til I've already blistered my finger tips. [Testimony of Jan Garrett before the Occupational Safety and Health Administration (March 30, 2000), at 6002-06, available at ttp://www.osha-slc.gov/ergonomics-standard/PROPOSED/transcripts/ergo03302000.pdf]

Heidi Eberhardt—a 32-year-old graduate of Dartmouth College who was employed as a writer/researcher on international trade issues by a .com Internet publishing company and who has bilateral tendonitis, tenosynovitis, and DeQuervain's syndrome—described the impact of her impairment in these terms:

> Here are a few simple things that I used to take for granted, but I now have difficulty with: squeezing shampoo bottles, dishwashing detergent, toothpaste tubes, turning on and off faucets, clipping finger and toe nails, driving, shifting gears, holding the steering wheel,

carrying groceries, cooking, carrying heavy pots, opening cans, cutting things, putting away dishes, cutting my food, opening milk carton ends, opening bottles, opening cans, making coffee, holding coffee, getting ice cubes out of the ice tray, moving anything heavy, dressing myself, buttoning pants and shirts, pulling things on, hanging up clothes, doing laundry, carrying clothes to the laundromat, pulling clothes in and out of the washer and dryer, folding clothes, cleaning the house, washing counters, bathrooms, vacuuming, writing letters, grocery lists, writing checks for bills, opening mail, opening doors and windows, turning my house key in the lock or my car key in the ignition, picking up my nephew.

In short, almost anything you need your hands to do, and this list does not include anything I might want to do for fun nor does it include computer or work activities. [Testimony of Heidi Eberhardt before OSHA (April 6, 2000) at 7343-44, available at http://www.osha-slc.gov/ergonomics-standard/PROPOSED/transcripts/ergo04062000.pdf.]

Eberhardt added:

> I would like to get married and have children some day. And I am worried about not being able to physically raise my children. [*Id.* at 7343.]

John Nalenpinski—a 43-year old machine operator who has worked for Briggs and Stratton in Milwaukee, Wisconsin for 24 years and who was diagnosed with bilateral carpal tunnel syndrome—testified about the impact of his injury as follows:

> I had problems sleeping, just working around the house, such as cutting the grass, trimming the bushes.
>
> Because the vibration from the tools made my hands ache real bad. I was always dropping stuff, such as coffee cups, soda, even fly wheels at work.

> The pain started. And it was so intense at night. And in the morning, my fingers were so tight I could hardly move them.
>
> I had a hard time just pulling my pants up or turning the door knob. . . . I still have problems today almost two years later. I have a hard time opening up jars and even getting my gas cap off my truck. . . . I have lost sensitivity in my hands to the point where I cannot tell if the clothes in the dryer are wet or dry. [Testimony of John Nalenpinski before OSHA (April 14, 2000), at 9416-9417, available at http://www.osha-slc.gov/ergonomics-standard/PROPOSED/transcripts/ergo04142000.pdf.]

Eugenia Barbosa, an assembly line worker who was diagnosed with severe damage to her rotator cuff, radial nerve, and wrist, testified:

> My life has completely changed for myself and for my family.
>
> Every day, I must deal with my pain. I am no longer able to work. . . . I am unable to cook and clean for my family. Even comb[ing] my hair and tak[ing] care of my own personal needs is very difficult for me. [Testimony of Eugenia Barbosa before OSHA (April 6, 2000), at 7324-7329, available at http://www.osha-slc.gov/ergo-nomics-standard/PROPOSED/transcripts/ergo04062000.pdf.]

Carol Py, a clerk typist with bilateral carpal tunnel syndrome and other MSDs of her hands and arms, added:

> I have trouble turning the pages. . . .
>
> I have difficulty driving, cleaning, cooking, and food shopping. And my husband, he mostly does all my shopping for me. And my grandchildren do a lot of the cleaning for me, too.
>
> The yard work is out of the question since I cannot rake or mow the lawn. I had to give up the things that I used to love like sewing and gardening. Before I was injured, I even had a green belt in karate.

> My arms are so weak now that I can barely take care of my three grandchildren. [Testimony of Carol Py before OSHA (March 31, 2000), at 6319-6322, available at http://www.osha-slc.gov/ergonomics-standard/PROPOSED/transcripts/ergo03312000.pdf.]

4. The foregoing materials make it plain that individuals with MSDs can be—and that many are—"substantially limited" by their impairment in the "major life activity" of performing manual tasks associated with recreation, household chores and living generally, either because they cannot perform the activity at all, or because they are "significantly restricted as to the condition, manner or duration" that they can perform that activity. 42 U.S.C. § 12102(2); 29 C.F.R. § 1630.2(j).[5] The functional effect of a particular MSD or MSDs on a particular individual's capacities depends on a multitude of factors, including how long the condition existed before it was diagnosed, whether the MSD was properly treated, and whether exposure to the activity causing the MSD has continued.

This Court has made it plain that "whether a person has a disability under the ADA is an individualized inquiry" which is to be "determined based on whether an impairment substantially limits the 'major life activities of such individual.'" *Sutton v. United Air Lines, Inc.*, *supra*, 527 U.S. at 483. In a case like this one where the impairment is carpal tunnel syndrome/tendinitis, the point of that individualized inquiry is to determine whether the impairment's functional effect is to substantially limit the impaired individual's ability to perform manual tasks—both those associated with working and those associated with recreation, household chores, and living generally.

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[5] Even Toyota recognizes that MSDs may qualify as a disability under the ADA. As Toyota notes, "[i]t is not difficult to imagine a case of CTS [carpal tunnel syndrome] so severe that it precludes an individual from performing a broad range of basic manual functions that the average person typically performs without difficulty." Pet. Br. at 18 n.6.

Here, the Sixth Circuit made that "individualized inquiry" and determined that Ms. Williams was substantially limited in the major life activity of performing manual tasks. As we have shown, the Sixth Circuit made that determination by applying the correct legal standard. And, while Toyota claims that the Court of Appeals' determination is not supported in the evidence, this Court does not ordinarily sit to review court of appeals' fact finding. There is no occasion to do so here.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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